



# NEWS

Judicial Council of California  
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(415) 865-7740

Lynn Holton, Public Information Officer

Release Date: November 17, 2003

Release Number: S.C. 47/03

## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF NOVEMBER 10, 2003**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#03-133 Gomez v. Superior Court, S118489. (B163651; 110 Cal.App.4th 667; Los Angeles County Superior Court; BC258512.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Is the operator of an amusement ride that starts and stops at the same place a common carrier under Civil Code section 2168 and subject to the higher standard of care set forth in Civil Code section 2100?

#03-134 People v. Guzman, S119129. (H024003; Santa Clara County Superior Court; 111 Cal.App.4th 57; CC199361.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Under the provisions of the Substance Abuse and Crime Prevention Act of 2000 (Prop.36, Gen. Elec. (Nov. 7, 2000)), is a defendant who commits a non-violent drug possession offense while on probation for a non-violent and non-serious offense entitled to the remedial treatment provided by that Act? (2) If not, does the Act violate equal protection because a defendant who commits a non-violent drug possession offense while on parole for a non-violent and non-serious offense is entitled to such treatment?

#03-135 People v. Johnson, S119230. (A098085; 111 Cal.App.4th 341; Contra

(over)

Costa County Superior Court; 011050-2.) Petition for review after the Court of Appeal reversed an order dismissing a criminal prosecution. This case presents the following issue: At a hearing on a motion to suppress evidence (Pen. Code, § 1538.5), can the prosecution satisfy its burden of proof by presenting, over the defendant's objection, an affidavit of the investigating officer in lieu of the officer's live testimony?

#03-136 People v. Lopez, S119294. (B161668; unpublished opinion; Los Angeles County Superior Court; BA212534.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issue: Is a defendant who is convicted of first degree murder with a finding that the crime was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22 subject to an enhancement of 10 years under section 186.22, subdivision (b)(1)(C) or instead to a minimum parole eligibility term of 15 years under section 186.22, subdivision (b)(5), which applies where the defendant is convicted of "a felony punishable by imprisonment in the state prison for life"?

#03-137 State Personnel Bd. v. Department of Personnel Administration, S119498. (C032633, C034943, C040263; 111 Cal.App.4th 839; Sacramento County Superior Court; 98CS 03314, 99CS00260, 01CS00109.) Petition for review after the Court of Appeal affirmed the judgments in two civil actions and dismissed as moot the appeal in a third action. The case presents the following issue: Do the disciplinary provisions of memoranda of understanding between the Department of Personnel Administration and certain state employee unions, under which employees may elect to have employer disciplinary decisions reviewed either by the State Personnel Board directly or under an alternative grievance and arbitration procedure which does not provide for review by the State Personnel Board, violate Article VII, section 3, subdivision (a) of the California Constitution, which provides that "[t]he [State Personnel Board] shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions"?

#03-138 People v. Wright, S119067. (C039031; 110 Cal.App.4th 1594; Sacramento County Superior Court; 99F09290.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Does the doctrine of imperfect self-defense apply where the defendant's actual but unreasonable belief in the need to defend himself is based on a delusion resulting from mental illness attributable to methamphetamine abuse?

#03-139 Finke v. Walt Disney Co., S118936. (B160267; 110 Cal.App.4th 1210; Los Angeles County Superior Court; BC271967.) Petition for review after the Court of Appeal reversed an order in a civil action. The court ordered briefing deferred pending decision in Kids Against Pollution v. California Dental Association, S117156 (#03-117), which includes the following issue: Were all of plaintiffs' causes of action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.), based upon various aspects of the defendant dental association's course of conduct relating to the health controversy over the safety of mercury amalgam fillings, subject to a special motion to strike under Code of Civil Procedure section 425.16?

## **DISPOSITIONS**

#02-154 Jackson Plaza Homeowners Assn. v. W. Wong Construction, S107821, was transferred for reconsideration in light of Lantzy v. Centex Homes (2003) 31 Cal.4th 363.

#02-180 People v. Chavez, S109918, was transferred for reconsideration in light of People v. Lee (2003) 31 Cal.4th 613.

The following cases were dismissed and remanded to the Court of Appeal:

#02-128 Ticket Track California, Inc. v. Department of Motor Vehicles, S107271.

#02-177 In re Eldridge T., S109520.

#02-197 Regional Parking, Inc. v. Department of Motor Vehicles, S110870.

#03-10 Stroock & Stroock & Lavan v. Tendler, S111188.

## **STATUS**

#02-123 People v. Oates, S106796. The court requested supplemental briefs in letter form addressing the following question: The effect of Penal Code section 654 aside, as a matter of statutory interpretation, should Penal Code section 12202.53 itself be

construed to call for imposition of more than one enhancement under subdivision (d) when a defendant's acts of discharging a firearm produce multiple convictions of attempted murder, but cause great bodily injury or death to only one person?

#02-190 People v. Gregory, S110450. In this case in which review was previously granted, the court ordered further action deferred pending decision in People v. Wright, S119067 (#03-138).

#03-125 People v. Chacon, S117879. In this case in which review was previously granted, the court ordered briefing deferred pending decision in People v. Thomas, S118052 (#03-126).

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